

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

Writ Petition No.6661 of 2001

Dated: 26.07.2007

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Between:

1. Annabheemoju Pothuluru and 27 others.

... Petitioners

and

1. The Secretary to Government of Andhra Pradesh,
I & CAD Department, Hyderabad and 3 others.

... Respondents

ORDER:

1. This writ petition is filed seeking *mandamus* to declare the action of respondents in not passing the award and paying compensation to the petitioners, along with the petitioners in W.P.No.32042 of 1998, on the only ground of shortage of sufficient funds as arbitrary and illegal, and consequently direct the respondents to pass the award and pay compensation to the petitioners to the extent of their lands acquired.

2. It is the case of petitioners that the Government acquired their lands along with the lands of other land owners to an extent of 20 acres 35 guntas under notification under Section 4 (1) and declaration under Section 6 of the Land Acquisition Act published in the Gazette

SRP No.34 dated 23.09.1997 and 35 dated 20.04.1997 respectively for laying the PWD road from Km.0/0 to 10/2 in the village limits of Tungapahad and advance possession was also taken. Their grievance is that though the Government had taken their lands, it did not pay the compensation. Thereupon, when there was delay in payment of compensation, some of the landowners approached the Hon'ble Court and filed WP.No.32042 of 1998 and the same was disposed of on 18.11.1998 by directing the respondents to pass awards within a period of two months. When the respondents have not passed the awards as per the order dated 18.11.1998, the petitioners in W.P.No.32042 of 1998 filed CC.No.812 of 1999, and thereafter, the respondents have passed the award on 09.11.1999. But, while passing the award, the LAO has confined the payment of compensation only to the persons who filed C.C.No.812 of 1999, on the ground of lack of sufficient funds.

Further, it is stated that though the name of the third petitioner herein was named as first petitioner in W.P.No.32042 of 1998, since his name was wrongly mentioned as Tanya instead of Thavooriya, his name was also deleted from the said award and he was also not paid the compensation.

As the writ petitioners herein are not paid the compensation, they represented to the respondents on 12.07.2000 and again on 21.08.2000 complaining against the discriminatory action of the respondents in not paying the compensation to them and further requested them to pay the compensation to them also, hence, this writ petition is filed.

3. In the counter affidavit filed on behalf of respondents, they have stated that the distribution of compensation to the petitioners under the

provisions of Nagarjuna Sagar Project (Acquisition of Land) Act 32 of 1956 (for short, 'Nagarjuna Sagar Act') is valid, since their lands were acquired for the purpose of formation of CADA road. The respondents contended that the petitioner No.26 herein was already covered in Award No.1/99-2000 dt.09.11.1999 passed pursuant to the directions of this Hon'ble Court in W.P.No.32042 of 1998 and in CC.No.812 of 1999 and that compensation was paid to him and he acknowledged the same. Further, the respondents contended that the compensation was not paid to the petitioners since the determination of compensation under the Nagarjuna Sagar Act is pending before the Hon'ble Supreme Court in the batch of cases and the petitioners are only entitled to compensation under the provisions of the Nagarjuna Sagar Act and not under the land Acquisition Act.

4. Heard learned counsel for the parties.

5. No doubt, in the counter affidavit filed on behalf of respondents, they have stated that the distribution of compensation under the provisions of Nagarjuna Sagar Act is valid.

7. The parliament in its wisdom made an amendment to the Constitution of India, and thus Article 31-A of the Constitution was inserted by the Constitution (First Amendment) Act, 1951. According to which no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights etc., shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or 19. According to the second proviso to the said Article where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person

under his personal cultivation it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto unless the law relating to acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

8. When a case with similar facts came up for a debate, a Division Bench of this Court in **K. RANGAIAH v. STATE**^[1], had clearly stated that applying the provisions of the Nagarjuna Sagar Act for those acquisitions made after 20-06-1964 is ultra vires of Article 31-A of the Constitution of India. In paragraph 7 of the said judgment, it is held as follows--

7. It was however sought to be argued by the learned Advocate-General that the second proviso which was introduced by the Constitution (7th amendment) Act and which came into effect on 20-06-1964 cannot affect the Nagarjunasagar Act of 1956. He drew our attention in this connection to the fact that both the Constitution (First Amendment) Act which introduced Art.31-A and the Constitution (Fourth Amendment) Act which imposes certain amendment to Art.31-A expressly provided that they will have retrospective effect; whereas no such provision was made by the Constitution (Seventh amendment) Act. We are unable to accept that contention of the learned Advocate-General. As has been held by the Supreme Court the second proviso introduced by the Constitution (First Amendment) Act creates a fundamental right in favour of persons who own lands within the ceiling limit and are cultivating them personally. The Constitution categorically states that such lands cannot be acquired except on payment of the market value on the date of the notification. Any law providing for payment of market value of less than that amount or any acquisition made under such law would infringe the fundamental right guaranteed to

the owners of the land under Art.31-A. Therefore, there can be no doubt that law which infringes a fundamental right even though passed before the amendment of the Constitution under which the fundamental right is conferred, would thereafter have no effect. It is true that the Constitution (Seventh Amendment) Act is not retrospective. It cannot therefore affect any acquisition made prior to the date when it came into force that is, prior to 20-06-1964. But any acquisition made subsequent to that date must conform to the requirements of Art.31-A as amended. If it does not, it would infringe the fundamental right guaranteed to the owner of the land under Art.31-A second proviso and would be void. We have therefore no hesitation in holding that S.23(1) of the Land Acquisition Act as amended by the Nagarjunasagar Act is ultra vires Art.31-A in so far as it applies to acquisition of lands made after 20-06-1964 within the ceiling limit and under personal cultivation of a person.

9. Looking at the case on hand, this Court is of the view that the application of the provisions of Nagarjuna Sagar Act for determination of compensation can definitely be said to be violative of Article 31-A of the Constitution of India. Evidently Section 4(1) notification in the instant case was published in Gazette No.34 dated 23.09.1997 and thereafter compensation was not paid to them, since the determination of compensation under the Nagarjuna Sagar Act is pending before the Hon'ble Supreme Court in the batch of cases. It amply makes clear that even the Government is not certain as to whether petitioners are entitled for compensation under the Nagarjuna Sagar Act or under the provisions of the Land Acquisition Act. Having regard to the fact that the provisions of Nagarjuna Sagar Act have no application for those acquisitions that have taken place prior to 20.06.1964 and as Section 4 (1) notification in the instant case was published in as early as in the year 1997, this Court is of the view that petitioners are entitled for compensation under the provisions of the Land Acquisition Act.

10. Learned counsel for petitioners Sri S. Lakshma Reddy at this juncture submits that as the other land owners, whose lands were also acquired under the very same award, were paid compensation in W.P.No.32042 of 1998, these petitioners are also entitled for the compensation on par with the claimants in W.P.No.32042 of 1998.

11. Accordingly, this writ petition is allowed and respondents are directed to complete the proceedings under the Provisions of the Land Acquisition Act, 1894 and accordingly pass the award and pay compensation to the petitioners on par with petitioners in W.P.No.32042 of 1998, dated 18.11.1998, in terms of the Land Acquisition Act. Further, it is made clear that the respondents shall pay the compensation to petitioner No.26 herein i.e., Lavudi Sukya, s/o. Vasiya also as per the terms of the Land Acquisition Act only, if he is not paid the compensation earlier in W.P.No.32042 of 1998 or subsequent to filing of CC.No.812 of 1999.

JUSTICE GOPALA KRISHNA TAMADA

Dt.26-07-2007

v v

^[1] AIR 1980 AP 165